

Legal Assistance Resource Center ❖ of Connecticut, Inc. ❖

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H.B. 6325 -- Recording of assignments of mortgage debt

Planning and Development Committee public hearing – March 11, 2013

Testimony of Raphael L. Podolsky

Recommended Committee action: APPROVAL OF THE BILL

This bill requires that assignments of mortgage debt be recorded on the land records. The sanction for failure to file within 60 days of the assignment is a surcharge of \$200 per week up to a maximum of \$5,000. This is the same sanction that already exists under C.G.S. 49-8(c) for the failure to deliver a release of mortgage within 60 days after the request by a mortgagor.

The bill responds to developments in the last 15 years, and especially in the last half dozen years, in which lenders have developed a privately-owned system known as "MERS" (the Mortgage Electronic Registration System) which has created a loophole in the centuries-old requirement that conveyances of land be recorded on the public land records. Under the MERS system, MERS registers as the holder of the mortgage while assignments are structured as assignments of only the loan for which the mortgage is security. MERS maintains that these assignments need not be recorded on the land records, even though in Connecticut it is only the holder of the loan (i.e., the creditor) that is entitled to foreclose. As a result, it can no longer be routinely determined from the land records what entity is in control of the debt and can foreclose the mortgage. **We think that the bill is important for at least four reasons:**

- It would restore the transparency of the land records, which would again contain all essential information and would be available to the public, title searchers, and the debtor on the mortgage. The entity with authority over the mortgage would again be identifiable on the land records. Under Connecticut law, the mortgage follows the debt, and the holder of the debt is the proper party to initiate a foreclosure.
- It would prevent the evasion of municipal recording fees. In 2011, the West Hartford Town Clerk estimated that town alone was losing about \$40,000 per year from fee avoidance resulting from the failure to record these assignments. Government officials in New York, Massachusetts, and other states have alleged that millions of dollars in fees have been avoided because of the failure to record assignments.
- It would reduce confusion as to who is entitled to bring foreclosure actions and restore the accuracy of the system. This past October, for example, the Delaware Attorney General initiated litigation against MERS under that state's Unfair Trade Practices Act for, among other things, failure to maintain records that accurately showed who owns the mortgage debt.
- It would prevent the reduction of funds for the state Community Investment Account, which, through a surcharge on recording fees, helps fund open space and farmland preservation, historic preservation, and affordable housing.